

BOARD OF ENVIRONMENTAL REVIEW AGENDA ITEM

EXECUTIVE SUMMARY FOR ACTION ON RULE REPEAL AND ADOPTION

Agenda # III.B.5.

Summary: The Department requests that the Board repeal the air quality preconstruction permit rules in ARM Title 17, chapter 8, subchapter 7, “Permit, Construction and Operation of Air Contaminant Sources,” and adopt new rules covering the same subjects.

List of Affected Rules: ARM Title 17, chapter 8, subchapter 7.

Affected Parties Summary: The proposed repeal and new rules would affect all parties required to obtain air quality preconstruction permits.

Scope of Proposed Proceeding: The Department requests that the Board repeal the air quality preconstruction permit rules in ARM Title 17, chapter 8, subchapter 7, “Permit, Construction and Operation of Air Contaminant Sources,” and adopt new rules covering the same subjects.

Background: The Department proposed this repeal and adoption of rules to update the preconstruction permitting process. Federal law allows states to implement preconstruction permitting programs for sources emitting regulated air pollutants, but the federal statutes do not prescribe the content of such programs. The existing Subchapter 7 rules include the State’s original approach to regulating sources of air pollution, along with numerous amendments that have occurred over the years. These revisions have created an arrangement that is often difficult to read and comprehend.

The changes from the existing rules to the proposed new rules are summarized in the statement of reasonable necessity included in the attached Notice of Public Hearing on Proposed Repeal and Adoption. In the initial rule notice, the Board proposed to combine certain existing state rules and separate the provisions of certain other existing rules. This is intended to place similar subjects together that are now located in separate rules, making the rules easier to read, understand and follow. Some of the proposed new rules would include new provisions. Some of the proposed new rules merely would reflect minor editorial revisions to the existing state rules that are not intended to change the meaning of existing requirements. These revisions are intended to clarify the rules, make the rules more concise, and conform the rules to current rule drafting style. Other proposed new rules include substantive revisions.

Hearing Information: Thomas Bowe conducted a public hearing on the proposed repeal and adoption of new rules and on submission of the proposed new rules to the U.S. Environmental Protection Agency (EPA) as proposed revisions to the SIP. The Board received numerous comments. The comments, the Department’s proposed responses and alternative responses are enclosed, along with the Hearing Officer Report. Due to the large number of comments suggesting various revisions to the rules, the Department has not attempted to draft and enclose a proposed final notice of repeal and adoption. If the Board adopts new rules at the upcoming

Board meeting, the Department will prepare a final rule notice reflecting the Board's decision on each issue and provide the notice to the Board for its consideration later in the meeting.

Board Options: The Board may:

1. Repeal the existing rules and adopt the proposed new rules;
2. Repeal the existing rules and adopt the new rules with further revisions that the Board finds are appropriate and that are within the scope of the Notice of Public Hearing on Proposed Repeal and Adoption; or
3. Decide not to repeal the existing rules and adopt the proposed new rules.

DEQ Recommendation: The Department recommends that the Board repeal the existing rules and adopt the new rules, with the revisions proposed by the Department in its suggested responses to comments.

Enclosures:

1. Notice of Public Hearing on Proposed Repeal and Adoption;
2. Hearing Officer Report; and
3. Alternative Responses to Comments.